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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Revision of the Commission's
Rules To Ensure Compatibility
With Enhanced 911 Emergency
Calling Systems

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CC Docket No. 94-102

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COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°"),¹ respectfully submits its comments regarding the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.² While 360° generally supports the *Further Notice's* goal of enhancing the availability of E911 service to wireless customers, it suggests several modifications to the proposals in order to ensure service improvements are implemented in the most efficient manner.

I. INTRODUCTION AND SUMMARY

In its *Further Notice*, the Commission sought comment on a number of ways in which the improvements to wireless E911 services set forth in the companion *Report*

¹ 360° is the second largest publicly traded wireless company in the United States, providing wireless voice and data services to more than 1.75 million customers in nearly 100 markets across 14 states.

² FCC 96-264 (released July 26, 1996) (Report and Order and Further Notice of Proposed Rulemaking). The Report and Order portion of the document shall be referred to as "*Report and Order*," and the Further Notice of Proposed Rulemaking shall be referred to as "*Further Notice*."

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and Order could be upgraded as the state of technology develops. In particular, the Commission sought comment on the following issues. First, the FCC proposed that, within five years, covered carriers should be required to provide public safety answering points ("PSAPs") with automatic location information ("ALI") accurate to a 40 foot sphere (using longitude, latitude, and altitude data) for 90 percent of all 911 calls processed.³ Second, the Commission proposed that carriers institute some sort of "monitoring mechanism" to ensure that state of the art wireless E911 technology is being deployed.⁴ Third, the Commission sought comment on whether within one year, wireless carriers should be required to transmit calls from non-service initialized callers even without a request from a PSAP.⁵ Finally, the Commission requested input on "how users can be informed or made aware that not all wireless 911 calls may be processed by carriers and delivered to PSAPs for monitoring and response."⁶

360° generally endorses the Commission's efforts to enhance the safety of wireless customers through improvements in E911 services. Specifically, 360° agrees with the Commission that implementation of the proposed wireless E911 upgrades should be contingent upon the establishment of sufficient funding mechanisms and the ability of PSAPs to process and utilize the data produced by these upgrades.

³ *Further Notice*, ¶ 138.

⁴ *Id.*, ¶ 143.

⁵ *Id.*, ¶ 149.

⁶ *Id.*, ¶ 150.

However, 360° respectfully submits that several of the Commission's proposals should be modified in order to avoid the imposition of needless regulation and better stimulate the creation of a more efficient and effective wireless E911 system. First, market mechanisms, rather than regulations, should be the primary means of providing for industry monitoring. In addition, carriers should not be required to route 911 calls from non-service initialized customers. Requiring wireless carriers to process such calls is not in the public interest because it makes call back impossible, encourages fraudulent and crank calls, prevents carriers from shielding themselves from liability, and creates a free rider problem. Finally, any customer education requirements imposed must take into account the fact that wireless E911 capabilities will differ on a PSAP-by-PSAP basis.

II. THE COMMISSION SHOULD ENSURE THAT WIRELESS E911 BENEFITS FROM IMPROVEMENTS IN ALI TECHNOLOGY WHILE LEAVING INDUSTRY MONITORING TO MARKETPLACE MECHANISMS

360° agrees that the Commission should "ensure that wireless E911 continues to benefit from improvements in location information technology."⁷ Therefore, it has no objection to the Commission periodically upgrading the E911 requirements that it imposes on CMRS carriers. 360° further agrees that prior to requiring wireless carriers to upgrade their ALI technology, a funding mechanism must be in place and PSAPs must be capable of processing the more accurate data that carriers are required

⁷ *Id.*, ¶ 136.

send them. However, the Commission need not adopt any monitoring regulations to ensure the implementation of such improvements, as market mechanisms will ensure that the most cost effective technologies are discovered and deployed.

Preliminarily, as the Commission wisely recognized, "a mechanism for the recovery of costs" must be in place prior to the implementation of any improvements in E911 capabilities.⁸ Such a cost recovery mechanism is critical if carriers are to be able to implement what will likely be very expensive network upgrades in order to meet any new FCC requirements. Cost recovery is particularly important regarding the Commission's proposal to improve ALI accuracy to a 40 foot sphere in 90 percent of all cases,⁹ given that producing such three-dimensional accuracy will probably require expensive modifications to both the network and the mobile handset.

Second, as further recognized by the Commission, prior to requiring carriers to provide more sophisticated E911 services, PSAPs: (1) must request these enhanced services; and (2) must be "capable of receiving and utilizing the data elements associated with the services."¹⁰ PSAPs are the end users of the improved ALI and call back information in that they will use this data in order to route the appropriate rescue personnel to accident scenes. Therefore, the FCC properly acknowledges that it

⁸ *Id.*, ¶ 138.

⁹ *Id.*

¹⁰ *Id.*

makes no sense for carriers to be required to provide this information if its end users are either unwilling or unable to use it.

Finally, 360° respectfully disagrees with the Commission's suggestion that "reporting requirements" or other "monitoring mechanisms" are necessary to ensure that state of the art technology is deployed.¹¹ Rather than requiring carriers to report on the quality of their E911 technology, and mandating that carriers deploy new technologies "if the benefit exceeds the cost,"¹² the Commission should let market mechanisms perform both of these functions. Because it is in carriers' economic interest to know about new and more efficient location technologies, they will ferret this information out on their own, without a Commission-imposed reporting requirement. Similarly, in a market as vigorously competitive as wireless telecommunications, as soon as the benefits of installing a new technology exceed its costs, carriers will implement this technology, lest they find themselves at a competitive disadvantage.

III. CARRIERS SHOULD NOT BE REQUIRED TO ROUTE 911 CALLS FROM NON-SERVICE INITIALIZED CALLERS

360° agrees with the numerous parties that, throughout this proceeding, have consistently maintained that requiring carriers to route 911 calls from non-service

¹¹ *Id.*, ¶ 143.

¹² *Id.*

initialized customers is not in the public interest.¹³ Such a requirement is counterproductive because: (1) it makes call back impossible; (2) it increases the number of fraudulent and prank calls; (3) it makes it difficult for carriers to protect themselves from liability; and (4) it creates a free rider problem, thereby increasing the rates for legitimate users.

Preliminarily, requiring carriers to provide 911 service to non-service initialized callers deprives PSAPs of the ability to call these people back, should the call become disconnected. As far back as the publication of the Joint Experts Meeting Report ("JEM Report") in October 1994, call back number has been one of the most important pieces of information requested by the public safety community. Thus, requiring carriers to serve non-service initialized customers defeats one of the main purposes of this proceeding.

Second, if a caller knows that he or she is anonymous, he or she will be much more willing to use 911 calls for fraudulent or prank purposes. Because carriers have no information about non-service initialized callers, such callers can make 911 calls without any fear of being identified. Other commenters have stated that in the past, such anonymous calls have created very dangerous situations. For example, as noted by the Cellular Telecommunications Industry Association ("CTIA"), in New Jersey, a police officer was killed while responding to a false 911 call placed from a stolen

¹³ See, e.g. *Report and Order*, ¶ 26 (noting that *all* commenters urged the Commission to deny the Ad Hoc Alliance for Public Access to 911's request that cellular carriers be required to transmit calls from non-service initialized handsets).

mobile phone, and in Virginia, prank bomb threats made from a cloned cellular phone tied up emergency services for more than a week.¹⁴

Third, it is very difficult for carriers to protect themselves from lawsuits by non-service initialized callers whose 911 calls are accidentally dropped or misrouted. Specifically, in its *Report and Order*, the Commission suggests that one of the means by which wireless carriers can protect themselves from liability is through contractual language in their service agreements.¹⁵ However, if a carrier has no contractual relationship with the caller, such liability protection cannot be invoked.

Finally, requiring carriers to serve callers who have not subscribed to any carrier's service creates a whole class of free riders. Because these callers cannot be billed, the rates for customers that legitimately subscribe to wireless services must be raised to make up for this uncompensated service. This free rider problem can only be expected to get worse as more and more outdated handsets become available, and more people decide to stash these no longer service-activated units in glove compartments for emergency use.

¹⁴ CTIA Petition For Reconsideration in Docket 94-102 at 7 (filed Sept. 3, 1996). *See also* Ameritech Petition For Reconsideration in Docket 94-102 at 8 (filed Sept. 3, 1996) (stating that the inability to trace 911 calls makes it impossible for emergency operators to evaluate the credibility of the caller).

¹⁵ *Report and Order*, ¶ 99.

IV. CONSUMER EDUCATION PROGRAMS MUST BE TAILORED ON A PSAP-BY-PSAP BASIS

In the *Further Notice*, the FCC proposed that customers should be educated "regarding limitations relating to the scope of 911 services."¹⁶ 360° agrees that consumer education is important, given that even after the requirements of the *Report and Order* are implemented, wireless E911 will have different features from the landline E911 service to which most consumers are accustomed. However, what makes the development of an educational program particularly challenging is the fact that the features of wireless E911 will differ on a PSAP-by-PSAP basis. In particular, the following wireless E911 features depend on decisions made by the serving PSAP: (1) whether or not non-service initialized customers are served;¹⁷ (2) whether or not ANI and pseudo-ANI are passed to the PSAP;¹⁸ and (3) whether or not ALI is passed to the PSAP.¹⁹

Thus, any educational programs ultimately developed must be tailored to each individual PSAP's service area. This presents a particular problem for wireless carriers, whose Metropolitan Statistical Area "MSA" and Rural Service Area "RSA"-based networks often encompass a number of different PSAPs. A possible solution to this problem is to require PSAPs, rather than carriers, to develop educational

¹⁶ *Further Notice*, ¶ 152.

¹⁷ *Report and Order*, ¶ 29.

¹⁸ *Id.*, ¶ 63.

¹⁹ *Id.*, ¶¶ 68-69.

programs, thereby ensuring that the correct information is disseminated in the proper geographical areas.

V. CONCLUSION

360° generally endorses the proposals set forth in the *Further Notice*.

However, in upgrading the capabilities of wireless E911 service, the Commission should rely on market mechanisms whenever possible, not require non-service initialized customers to be served, and ensure that educational efforts are carried out on a PSAP-by-PSAP basis. Such modifications to the Commission's proposals will produce a more efficient and better targeted E911 program.

Respectfully submitted,

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